**OPERATING AGREEMENT**

**BETWEEN**

**FOUNDATION, INC.**

**AND**

**INSTITUTION/AGENCY**

 This Operating Agreement between Foundation, Inc. and Institution/Agency (“Operating Agreement”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_­­­­­\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between Institution, herein known as “Institution/Agency” and the Foundation, Inc., herein known as “Foundation”.

 WHEREAS, the Foundation was organized and incorporated in \_\_\_\_ for the purpose of generating voluntary private support from \_\_\_\_\_\_, \_\_\_\_\_\_\_, friends, corporations, foundations, and others for the benefit of the Institution/Agency.

 WHEREAS, the Foundation exists to raise and manage private resources supporting the mission and priorities of the Institution/Agency, and provide opportunities for \_\_\_\_\_\_ (e.g. students) and a degree of institutional excellence unavailable with state funding levels.

 WHEREAS, the Foundation is dedicated to assisting the Institution/Agency in the building of the endowment to address, through financial support, the long-term academic and other priorities of the Institution/Agency.

 WHEREAS, as stated in its articles of incorporation, the Foundation is a separately incorporated 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the Institution/Agency, soliciting cash, securities, real and intellectual property, and other private resources for the support of the Institution/Agency, and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities.

WHEREAS, in connection with its fund-raising and asset-management activities, the Foundation utilizes, in accordance with this Operating Agreement, personnel experienced in planning for and managing private support.

WHEREAS, the mission of the Foundation is to secure, manage and distribute private contributions and support the growth and development of the Institution/Agency.

 WHEREAS, the Institution/Agency and Foundation desire to set forth in writing various aspects of their relationship with respect to matters such as the solicitation, receipt, management, transfer and expenditure of funds.

 WHEREAS, the Parties hereby acknowledge that they will at all times conform to and abide by the Idaho State Board of Education’s Governing Policies and Procedures, Gifts and Affiliated Foundations Policy V.E., and that they will submit this Operating Agreement for initial State Board of Education (“State Board”) approval, and thereafter every three (3) years, or as otherwise requested by the State Board, for review and re-approval.

 WHEREAS, the Foundation and the Institution/Agency intend for this Operating Agreement to be the written operating agreement required by State Board Policy V.E.2.b.

 NOW THEREFORE, in consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Foundation's Purposes**

The Foundation is the primary affiliated foundation responsible for securing, managing and distributing private support for the Institution/Agency. Accordingly, to the extent consistent with the Foundation's Articles of Incorporation and Bylaws, and the State Board's Policies and Procedures, the Foundation shall: (1) solicit, receive and accept gifts, devises, bequests and other direct or indirect contributions of money and other property made for the benefit of the Institution/Agency from the general public (including individuals, corporations, other entities and other sources); (2) manage and invest the money and property it receives for the benefit of the Institution/Agency; and (3) support and assist the Institution/Agency in fundraising and donor relations.

In carrying out its purposes, the Foundation shall not engage in activities that: (1) conflict with federal or state laws, rules and regulations (including all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations); (2) cause the Institution to be in violation of applicable polices of the State Board; or (3) conflict with the role and mission of the Institution/Agency.

**Foundation's Organizational Documents**

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws to the Institution/Agency. The Foundation, to the extent practicable, also shall provide the Institution/Agency with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws. The Institution/Agency shall provide all such documents to the State Board.

1. **Institution/Agency Resources and Services**
2. Institution/Agency Employees.
	1. *Institution/Agency/Foundation Liaison*: The Institution/Agency's Vice President for Institution/Agency Advancement shall serve as the Institution/Agency’s Liaison to the Foundation.
		1. The Institution/Agency's Vice President for Institution/Agency Advancement shall be responsible for coordinating the Institution/Agency's and the Foundation's fundraising efforts and for supervising and coordinating the administrative support provided by the Institution/Agency to the Foundation.
		2. The Vice President for Institution/Agency Advancement or designee shall attend each meeting of the Foundation’s Board of Directors and shall report on behalf of the Institution/Agency to the Foundation's Board of Directors regarding the Institution/Agency's coordination with the Foundation's fundraising efforts.
	2. *Managing Director*:The *Managing Director* of the Foundation is an employee of the Institution/Agency loaned to the Foundation. All of the Managing Director's services shall be provided directly to the Foundation as follows:
		1. The *Managing Director* shall be responsible for the supervision and control of the day-to-day operations of the Foundation. More specific duties of the *Managing Director* may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in paragraph (iii) below. The *Managing Director* shall be subject to the control and direction of the Foundation.
		2. The *Managing Director* shall be entitled to Institution/Agency benefits to the same extent and on the same terms as other full-time Institution/Agency employees of the same classification as the *Managing Director*. The Foundation shall reimburse the Institution/Agency for all costs incurred by the Institution/Agency in connection with the Institution/Agency's employment of the *Managing Director* including such expenses as salary, payroll taxes, and benefits.
		3. The Foundation and the Institution/Agency shall enter into a written agreement, in the form of Exhibit “A” hereto, establishing that the Managing *Director* is an employee of the Institution/Agency but subject to the direction and control of the Foundation (generally a "Loaned Employee Agreement"). The Loaned Employee Agreement shall also set forth the relative rights and responsibilities of the Foundation and the Institution/Agency with respect to the Managing *Director*, including the following:
			1. The Foundation shall have the right to choose to terminate the Loaned Employee Agreement in accordance with Foundation Procedures and applicable law, such termination may include election by the Foundation for non-renewal of the Loaned Employee Agreement.
			2. Termination of the Loaned Employee Agreement in accordance with the Foundation procedures and applicable law shall constitute grounds for a termination proceeding by the Institution/Agency or for non-renewal of any obligation of the Institution/Agency to employ the Loaned Employee, subject to applicable legal and procedural requirements of the State of Idaho and the Institution/Agency.
			3. The Loaned Employee shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation president or designee.
	3. *Other Loaned Employees.* Other loaned employees providing services pursuant to this Operating Agreement shall also serve pursuant to a Loaned Employee Agreement which shall set forth their particular responsibilities and duties.

d. *Other Institution/Agency Employees Holding Key Foundation or Administrative or Policy Positions*: In the event the Institution/Agency and the Foundation determine it is appropriate for one or more additional Institution/Agency employees who function in a key administrative or policy making capacity for the Institution/Agency (including, but not limited to, any Institution/Agency Vice-President or equivalent position) to serve both the Institution/Agency and the Foundation, then, pursuant to State Board Policy V.E., this Operating Agreement shall be amended to clearly set forth the authority and responsibilities of the position of any such Institution/Agency employee.

e. *Limited Authority of Institution/Agency Employees.* Notwithstanding the foregoing provisions, no Institution/Agency employee who functions in a key administrative or policy making capacity for the Institution/Agency (including, but not limited to, any Institution/Agency Vice-President or equivalent position) shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of Foundation employees.

1. Support Services. The Institution/Agency shall provide administrative, financial, accounting, investment, and development services to the Foundation, as set forth in the Service Agreement attached hereto as Exhibit "B" ("Service Agreement"). All Institution/Agency employees who provide support services to the Foundation shall remain Institution/Agency employees under the direction and control of the Institution/Agency, unless agreed that the direction and control of any such employee will be vested with the Foundation in a written Loaned Employee Agreement. The Foundation will pay directly to the Institution/Agency the portion of the overhead costs associated with the services provided to the Foundation pursuant to the Service Agreement. The portion of such costs shall be determined by the agreement of the Parties.
2. Institution/Agency Facilities and Equipment. The Institution/Agency shall provide the use of the Institution/Agency's office space and equipment to the Foundation upon the terms agreed to by the Institution/Agency and the Foundation. The terms of use (including amount of rent) of the Institution/Agency's office space and equipment shall be as set forth in the Service Agreement.
3. No Foundation Payments to Institution/Agency Employees. Notwithstanding any provision of this Operating Agreement to the contrary, the Foundation shall not make any payments directly to an Institution/Agency employee in connection with any resources or services provided to the Foundation pursuant to this Operating Agreement.
4. **Management and Operation of Foundation**

The management and control of the Foundation shall rest with its Board of Directors.

1. Gift Solicitation.

*Authority of Vice President for Institution/Agency Advancement*. All Foundation gift solicitations shall be subject to the direction and control of the Vice President for Institution/Agency Advancement.

* 1. *Form of Solicitation*. Any and all Foundation gift solicitations shall make clear to prospective donors that (1) the Foundation is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the Institution/Agency; and (2) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation's Board of Directors.
	2. *Foundation is Primary Donee*. Absent unique circumstances, prospective donors shall be requested to make gifts directly to the Foundation rather than to the Institution/Agency.

1. Acceptance of Gifts.
2. *Approval Required Before Acceptance of Certain Gifts*. Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by the Institution/Agency, the Foundation shall obtain the prior written approval of the Institution/Agency. Similarly, the Foundation shall also obtain the prior written approval of the Institution/Agency of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the Institution/Agency.
3. *Acceptance of Gifts of Real Property*. The Foundation shall conduct adequate due diligence on all gifts of real property that it receives. All gifts of real property intended to be held and used by the Institution/Agency shall be approved by the State Board before acceptance by the Institution/Agency and the Foundation. In cases where the real property is intended to be used by the Institution/Agency in connection with carrying out its proper functions, the real property may be conveyed directly to the Institution/Agency, in which case the Institution/Agency and not the Foundation shall be responsible for the due diligence obligations for such property.
4. *Processing of Accepted Gifts.* All gifts received by the Institution/Agency or the Foundation shall be delivered (if cash) or reported (if any other type of property) to the Foundation's designated gift administration office (a unit of the Foundation) in accordance with the Service Agreement.
5. Fund Transfers. The Foundation agrees to transfer funds, both current gifts and income from endowments, to the Institution/Agency on a regular basis as agreed to by the Parties. The Foundation's Treasurer or other individual to whom such authority has been delegated by the Foundation's Board of Directors shall be responsible for transferring funds as authorized by the Foundation's Board of Directors.
	1. *Restricted Gift Transfers*. The Foundation shall inform the Institution/Agency officials into whose program or department funds are transferred of any restrictions on the use of such funds and provide such officials with access to any relevant documentation concerning such restrictions. Such Institution/Agency officials shall account for such restricted funds separate from other program and department funds in accordance with applicable Institution/Agency policies and shall notify the Foundation on a timely basis regarding the uses of such restricted funds.
	2. *Unrestricted Gift Transfers*. The Foundation may utilize any unrestricted gifts it receives for any use consistent with the Foundation’s purposes as generally summarized in Article I of this Operating Agreement. If the Foundation elects to use unrestricted gifts to make grants to the Institution/Agency, such grants shall be made at such times and in such amounts as the Foundation's Board of Directors may determine in the Board's sole discretion.
6. Foundation Expenditures and Financial Transactions.
7. *Signature Authority*. The Foundation designates the Foundation Treasurer as the individual with signature authority for the Foundation in all financial transactions. The Foundation may supplement or change this designation with written notice to the Institution/Agency; provided, however, in no event may the person with Foundation signature authority for financial transactions be an Institution/Agency employee.
8. *Expenditures*. All expenditures of the Foundation shall be (1) consistent with the charitable purposes of the Foundation, and (2) not violate restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.
9. Institution/Agency Report on Distributed Funds. On a regular basis, which shall not be less than annually, the Institution/Agency shall report to the Foundation on the use of restricted and unrestricted funds transferred to the Institution/Agency. This report shall specify the restrictions on any restricted funds and the uses of such funds.
10. Transfer of Institution/Agency Assets to the Foundation. No Institution/Agency funds, assets, or liabilities may be transferred directly or indirectly to the Foundation without the prior approval of the State Board except when:
	1. A donor inadvertently directs a contribution to the Institution/Agency that is intended for the Foundation in which case such funds may be transferred to the Foundation so long as the documents associated with the gift indicate the Foundation was the intended recipient of the gift. In the absence of any such indication of donor intent, such funds shall be deposited in an institutional account, and State Board approval will be required prior to the Institution/Agency's transfer of such funds to the Foundation.
	2. The Institution/Agency has gift funds that were originally transferred to the Institution/Agency from the Foundation and the Institution/Agency wishes to return a portion of those funds to the Foundation for reinvestment consistent with the original intent of the gift.
	3. Transfers of a *de minimis* amount not to exceed $10,000 from the Institution to the Foundation provided such funds are for investment by the Foundation for scholarship or other general Institution/Agency support purposes. This exception shall not apply to payments by the Institution to the Foundation for obligations of the Institution to the Foundation, operating expenses of the Foundation or other costs of the Foundation.
	4. The transfer is of funds raised by the Institution for scholarship or program support and the funds are deposited with the affiliated foundation for investment and distribution in accordance with the purpose for which the funds were raised.
11. Separation of Funds. All Foundation assets (including bank and investment accounts) shall be held in separate accounts in the name of the Foundation using Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts. For convenience purposes, some Foundation expenses may be paid through the Institution/Agency such as payroll and campus charges. These expenses will be paid through accounts clearly titled as belonging to the Foundation and shall be reimbursed by the Foundation on a regular basis.
12. Insurance. The Foundation shall maintain insurance to cover the operations and activities of its directors, officers and employees. The Foundation shall also maintain general liability coverage.
13. Investment Policies. All funds held by the Foundation, except those intended for short term expenditures, shall be invested in accordance with the Uniform Prudent Management of Institutional Funds Act, Idaho Code Sections 33-5001 to 33-5010, and the Foundation’s investment policy which is attached hereto as Exhibit "C"; provided, however, the Foundation shall not invest any funds in a manner that would violate the applicable terms of any restricted gifts. The Foundation shall provide to the Institution/Agency any updates to such investment policy which updates shall also be attached hereto as Exhibit "C".
14. Organization Structure of the Foundation. The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation and the Bylaws. The Foundation agrees to provide copies of such Articles and Bylaws as well as any subsequent amendments to such documents to both the Institution/Agency and the State Board. Any such amendments to the Articles and Bylaws shall be attached hereto as additions to Exhibit "D" and “E”, respectively.
15. **Foundation Relationships with the Institution/Agency**

At all times and for all purposes of this Operating Agreement, the Institution and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party, provided, however, the Institution and the Foundation acknowledge that the Association carries out functions for the benefit of the Institution. As such, the Parties shall share certain information as provided below.

1. Access to Records. Subject to recognized legal privileges, each Party shall have the right to access the other Party’s financial, audit, donor and related books and records as needed to properly conduct its operations.
2. Record Management.
3. The Parties recognize that the records of the Foundation relating to actual or potential donors contain confidential information. Such records shall be kept by the Foundation in such a manner as to protect donor confidentiality to the fullest extent allowed by law. Notwithstanding the access to records permitted above, access to such confidential information by the Institution/Agency shall be limited to the Institution/Agency's President and any designee of the Institution/Agency's President.
4. The Foundation shall be responsible for maintaining all permanent records of the Foundation including but not limited to the Foundation's Articles, Bylaws and other governing documents, all necessary documents for compliance with IRS regulations, all gift instruments, and all other Foundation records as required by applicable laws.
5. Although the Foundation is a private entity and is not subject to the Idaho Public Records Law, the Foundation, while protecting personal and private information related to private individuals, is encouraged, to the extent reasonable, to be open to public inquiries related to revenue, expenditure policies, investment performance and/or similar non-personal and non-confidential financial or policy information.
6. Name and Marks. Consistent with its mission to help to advance the plans and objectives of the Institution, the Institution grants the Association the limited, non-exclusive use of the name Institution, for use in its support of the Institution. The Association shall operate under the Institution’s logotype in support of its organizational business and activities. Any use by the Association of the Institution’s logotypes or other trademarks must be with prior approval of the Institution through the Office of Trademark Licensing and Enforcement.
7. Identification of Source. The Foundation shall be clearly identified as the source of any correspondence, activities and advertisements emanating from the Foundation.
8. Establishing the Foundation's Annual Budget. The Foundation shall provide the Institution/Agency with the Foundation's proposed annual operating budget and capital expenditure plan (if any) prior to the date the Foundation's Board of Directors meeting at which the Foundation's Board will vote to accept such operating budget. Any of the Institution/Agency's funding requests to the Foundation shall be communicated in writing to the Foundation's Treasurer and Assistant Treasurer by April 1 of each year.
9. Attendance of Institution/Agency's President at Foundation's Board of Director Meetings. The Institution/Agency's President shall be invited to attend all meetings of the Foundation's Board of Directors and may act in an advisory capacity in such meetings.
10. Supplemental Compensation of Institution/Agency Employees. Any supplemental compensation of Institution/Agency employees by the Foundation must be preapproved by the State Board. Any such supplemental payment or benefits must be paid by the Foundation to the Institution/Agency, and the Institution/Agency shall then pay compensation to the employee in accordance with the Institution/Agency's normal practice. No Institution/Agency employee shall receive any payments or other benefits directly from the Foundation.
11. **Audits and Reporting Requirements**
12. Fiscal Year. The Foundation and the Institution/Agency shall have the same fiscal year.
13. Annual Audit. On an annual basis, the Foundation shall have an audit conducted by a qualified, independent certified public accountant who is not a director or officer of the Foundation. The annual audit will be provided on a timely basis to the Institution/Agency’s President and the State Board, in accordance with the State Board’s schedule for receipt of said annual audit. The Foundation’s annual statements will be presented in accordance with standards promulgated by the Financial Accounting Standards Board (FASB). The Foundation is a component unit of the Institution/Agency as defined by the Government Accounting Standards Board (GASB). Accordingly, the Institution/Agency is required to include the Foundation in its financial statements which follow a GASB format. Therefore, the Foundation will include in its audited financial statement, schedules reconciling the FASB Statements to GASB standards in the detail required by GASB Standards. The annual audited financial statements, including the auditor’s independent opinion regarding such financial statements, and schedules shall be submitted to the Institution/Agency Office of Finance and Administration in sufficient time to incorporate the same into the Institution/Agency’s statements. All such reports and any accompanying documentation shall protect donor privacy to the extent allowable by law.
14. Separate Audit Rights. The Institution/Agency agrees that the Foundation, at its own expense, may at any time during normal business hours conduct or request additional audits or reviews of the Institution/Agency’s books and records pertinent to the expenditure of donated funds. The Foundation agrees that the Institution/Agency and the State Board, at its own expense, may, at reasonable times, inspect and audit the Foundation's books and accounting records.
15. Annual Reports to Institution/Agency President. On a regular basis, which shall not be less than annually, the Foundation shall provide a written report to the Institution/Agency President setting forth the following items:
	1. the annual financial audit report;
	2. an annual report of Foundation transfers made to the Institution/Agency, summarized by Institution/Agency department;
	3. an annual report of unrestricted funds received by the Foundation;
	4. an annual report of unrestricted funds available for use during the current fiscal year;
	5. a list of all of the Foundation's officers, directors, and employees;
	6. a list of Institution/Agency employees for whom the Foundation made payments to the Institution/Agency for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment;
	7. a list of all state and federal contracts and grants managed by the Foundation;
	8. an annual report of the Foundation's major activities;
	9. an annual report of each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding Foundation fiscal year for the benefit of the Institution/Agency; and
	10. an annual report of (1) any actual litigation involving the Foundation during its fiscal year; (2) identification of legal counsel used by the Foundation for any purpose during such year; and (3) identification of any potential or threatened litigation involving the Foundation.
16. **Conflict of Interest and Code of Ethics and Conduct**
17. Conflicts of Interest Policy and Code of Ethics and Conduct. The Foundation's Conflict of Interest Policy is attached as Exhibit “F”, and its Code of Ethical Conduct is set forth as Exhibit “G”.

1. Dual Representation. Under no circumstances may an Institution/Agency employee represent both the Institution/Agency and the Foundation in any negotiation, sign for both entities in transactions, or direct any other institution employee under their immediate supervision to sign for the related Party in a transaction between the Institution/Agency and the Foundation. This shall not prohibit Institution/Agency employees from drafting transactional documents that are subsequently provided to the Foundation for its independent review, approval and use.
2. Contractual Obligation of Institution/Agency. The Foundation shall not enter into any contract that would impose a financial or contractual obligation on the Institution/Agency without first obtaining the prior written approval of the Institution/Agency. Institution/Agency approval of any such contract shall comply with policies of the State Board with respect to State Board approval of Institution/Agency contracts.
3. Acquisition or Development or Real Estate. The Foundation shall not acquire or develop real estate or otherwise build facilities for the Institution/Agency's use without first obtaining approval of the State Board. In the event of a proposed purchase of real estate by the Foundation for the Institution/Agency, the Institution/Agency shall notify the State Board at the earliest possible date. Any such proposed purchase for the Institution/Agency's use shall be a coordinated effort of the Institution/Agency and the Foundation. Any notification to the State Board required pursuant to this paragraph may be made through the State Board's chief executive officer in executive session pursuant to the open meeting law, set forth in Idaho Code, Title 74, Chapter 2.
4. **General Terms**
	1. Effective Date. This Operating Agreement shall be effective on the date set forth above.
	2. Right to Terminate. This Operating Agreement shall terminate upon the mutual written agreement of both Parties. In addition, either Party may, upon 90 days prior written notice to the other, terminate this Operating Agreement, and either Party may terminate this Operating Agreement in the event the other Party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting Party specifying the nature of the default. Should the Institution/Agency choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the Foundation that is not cured within the time frame set forth above, the Foundation may require the Institution/Agency to pay, within 180 days of written notice, all debt incurred by the Foundation on the Institution/Agency’s behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the Institution/Agency that is not cured within the time frame set forth above, the Institution/Agency may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner. The Parties agree that in the event this Operating Agreement shall terminate, they shall cooperate with one another in good faith to negotiate a new agreement within six (6) months. In the event negotiations fail, the Parties will initiate the dispute resolution mechanism described below (through reference to the Foundation Chair and the State Board) to further attempt to negotiate a new agreement within the time period specified herein, they will refer the matter to the State Board for resolution. Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation.
5. Dispute Resolution. The Parties agree that in the event of any dispute arising from this Operating Agreement, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the Parties. If the staff cannot resolve the dispute, then the dispute will be referred to the Chair of the Board of the Foundation and the Institution/Agency President. If the Foundation Board Chair and Institution/Agency President cannot resolve the dispute, then the dispute will be referred to the Foundation Chair and the State Board for resolution. If they are unable to resolve the dispute, the Parties shall submit the dispute to mediation by an impartial third Party or professional mediator mutually acceptable to the Parties. If and only if all the above mandatory steps are followed in sequence and the dispute remains unresolved, then, in such case, either Party shall have the right to initiate litigation arising from this Operating Agreement. In the event of litigation, the prevailing Party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees, and other professional expenses.
6. Dissolution of Foundation. Consistent with provisions appearing in the Foundation’s Bylaws and Articles of Incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code §501(c)(3) organization, the Foundation shall transfer to the State Board (or Institution, as applicable) the balance of all property and assets of the Foundation from any source, after the payment of all debts and obligations of the Foundation, and such property shall be vested in the State Board in trust for the use and benefit of the Institution/Agency.
7. Board Approval of Operating Agreement. Prior to the Parties' execution of this Operating Agreement, an unexecuted copy of this Operating Agreement must be approved by the State Board. Furthermore, this Operating Agreement, including any subsequent modifications and restatements of this Operating Agreement, shall be submitted to the State Board for review and approval no less frequently than once every three (3) years or more frequently if otherwise requested by the State Board.
8. Modification. Any modification to the Operating Agreement or Exhibits hereto shall be in writing and signed by both Parties.
9. Providing Document to and Obtaining Approval from the Institution/Agency. Unless otherwise indicated herein, any time documents are to be provided to the Institution/Agency or any time the Institution/Agency's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the Institution/Agency's President or an individual to whom such authority has been properly delegated by the Institution/Agency's President.
10. Providing Documents to and Obtaining Approval from the Foundation. Unless otherwise indicated herein, any time documents are to be provided to the Foundation or any time the Foundation's approval of any action is required, such document shall be provided to, or such approval shall be obtained from, the Foundation's Board of Directors or an individual to whom such authority has been properly delegated by the Foundation's Board of Directors.
11. Notices. Any notices required under this Operating Agreement may be mailed or delivered as follows:

To the Institution/Agency:

 President

 Institution/Agency

 Street Address

 City, State and Zip

To the Foundation:

 Managing Director

 Foundation, Inc.

 Street Address

 City, State and Zip

1. No Joint Venture. At all times and for all purposes of this Memorandum of Understanding, the Institution/Agency and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party.
2. Liability. The Institution/Agency and Foundation are independent entities and neither shall be liable for any of the other’s contracts, torts, or other acts or omissions, or those of the other’s trustees, directors, officers, members or employees.
3. Indemnification. To the extent allowed by law, the Institution/Agency and the Foundation each agree to indemnify, defend and hold the other Party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney’s fees arising out of or resulting from the willful act, fault, omission, or negligence of the Party, its employees, contractors, or agents in performing its obligations under this Operating Agreement. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one Party who is working for the benefit of the other Party. Nothing in this Operating Agreement shall be construed to extend to the Institution/Agency’s liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et seq.
4. Assignment. This Operating Agreement is not assignable by either Party, in whole or in part.
5. Governing Law. This Operating Agreement shall be governed by the laws of the State of Idaho.
6. Severability. If any provision of this Operating Agreement is held invalid or unenforceable to any extent, the remainder of this Operating Agreement is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.
7. Entire Agreement. This Operating Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

 IN WITNESS WHEREOF, the Institution/Agency and the Foundation have executed this Operating Agreement on the above specified date.

 Institution/Agency

 By:

 Its: President

 Institution/Agency Foundation, Inc.

 By:

 Its: Chairman

**EXHIBIT "A"**

Loaned Employee Agreement

**EXHIBIT "B"**

Service Agreement

**EXHIBIT "C"**

Investment Policy

**EXHIBIT "D"**

Articles of Incorporation

**EXHIBIT "E"**

Bylaws**EXHIBIT "F"**

Conflict of Interest Policy

 **EXHIBIT "G"**

Code of Ethical Conduct